

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**IN RE DIGITEK®  
PRODUCTS LIABILITY LITIGATION**

**MDL NO. 1968**

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**THIS ACTION RELATES TO:**

Campbell v. Actavis, 2:08-cv-01075;  
Chambers v. Actavis Totowa, LLC, 2:08-cv-01175;  
Konek v. Actavis, Inc., 2:08-cv-1053;  
Lange v. Actavis Totowa, LLC, 2:09-cv-00448;  
Wilburn v. Actavis Group hf, 2:08-cv-01017;  
York v. Actavis Totowa, LLC, 2:09-cv-00544

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**DECLARATION OF FRED THOMPSON IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

I, Fred Thompson, Esq., depose and say the following:

1. I am a member of the law firm Motley Rice LLC, Co-Lead Counsel for the Plaintiffs' Steering Committee in *In re Digitek Products Liability Litigation*, Case No. 2:08-md-01968 (JRG), United States District Court, Southern District of West Virginia.
2. Attached hereto as Exhibit A is a true and correct copy of the U.S. Food and Drug Administration's ("FDA") publication, FDA 101: Product Recalls, as available on [www.fda.gov](http://www.fda.gov).
3. Attached hereto as Exhibit B is a true and correct copy of Answers of Defendants Actavis Inc., Actavis Totowa LLC and Actavis Elizabeth LLC to Plaintiffs' First Set of Interrogatories Directed to Defendants.
4. Attached hereto as Exhibit C is a true and correct copy of the "Warning Letter" issued in August 2006 to the Actavis Defendants through Divya C. Patel, President of Actavis Totowa, in Little Falls, New Jersey.

5. Attached hereto as Exhibit D is a true and correct copy of Answers of Defendants Actavis Inc., Actavis Totowa LLC and Actavis Elizabeth LLC to Plaintiffs' Second Set of Interrogatories Directed to Defendants.

6. Attached hereto as Exhibit E is a true and correct copy of excerpts of the transcript of the deposition of Swapan Roychowdhury taken on December 15, 2009.

7. Attached hereto as Exhibit F is a true and correct copy of FDA 483 issued to Actavis Totowa on February 8, 2006.

8. Attached hereto as Exhibit G is a true and correct copy of select pages of Defendants' 2004 Annual Report on Digitek® to the FDA dated February 21, 2005 (Bates stamped ACTAV000005687-97).<sup>1</sup>

9. Attached hereto as Exhibit I is a true and correct copy of the U.S. Government's "Complaint for Permanent Injunction" filed in U.S.A. v. Actavis Totowa, LLC, Actavis, Inc., corporations and Sigurdur Oli Olafsson, Douglas Boothe, individuals, Case 2:08-cv-05656-SDL-MCA.

10. Attached hereto as Exhibit J is a true and correct copy of the "Revised Warning Letter" issued in or around February 2007 to the Actavis Defendants through Actavis Totowa.

11. Attached hereto as Exhibit K is a true and correct copy of excerpts of the transcript of the deposition of Paul Galea taken on December 9, 2009.

12. Attached hereto as Exhibit L is a true and correct copy of the April 25, 2008 press release issued by the FDA announcing the Class I Recall of Digitek®.

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<sup>1</sup> The parties disagreed as to the confidential nature of a particular document that Plaintiffs had intended to use as an Exhibit. However, as an accommodation to Defendants, Plaintiffs removed the reference to the document we had intended to introduce as Exhibit H after Defendants informed us of their intention to assert a claim of confidentiality over that document.

13. Attached hereto as Exhibit M is a true and correct copy of the April 25, 2008 press release issued by Actavis Totowa LLC announcing the Class I Recall of Digitek®.

14. Attached hereto as Exhibit N is a true and correct copy of the transcript of the deposition of Lorena Ard taken on December 11, 2009, and Ms. Ard's Amended Digitek Plaintiff Fact Sheet.

15. Attached hereto as Exhibit O is a true and correct copy of excerpts of the transcript of the deposition of Dale Campbell taken on July 31, 2009, the errata sheet for the transcript.

16. Attached hereto as Exhibit P is a true and correct copy of the transcript of the deposition of Alan Chambers taken on September 22, 2009.

17. Attached hereto as Exhibit Q is a true and correct copy of the transcript of the deposition of Peter J. Konek taken on July 27, 2009, and Mr. Konek's Plaintiff Fact Sheet.

18. Attached hereto as Exhibit R is a true and correct copy of the transcript of the deposition of William E. Lange taken on October 6, 2009.

19. Attached hereto as Exhibit S is a true and correct copy of the Plaintiff Fact Sheet for Judy Whitaker, as Executrix of the Estate of Anna Flight.

20. Attached hereto as Exhibit T is a true and correct copy of the transcript of the deposition of Willie Mae Wilburn taken on August 6, 2009.

21. Attached hereto as Exhibit U is a true and correct copy of excerpts of the transcript of the deposition of Terri-Lee Nataline taken on December 14, 2009.

22. Attached hereto as Exhibit V is a true and correct copy of excerpts of the transcript of Richard Dowling taken on December 16, 2009.

23. Attached hereto as Exhibit W is a true and correct copy of the resume of Bell Law Firm PLLC.

24. Attached hereto as Exhibit X is a true and correct copy of the resume of Fred Thompson of Motley Rice LLC.

25. Attached hereto as Exhibit Y is a true and correct copy of the resume of Frankovitch, Anetakis, Colantonio & Simon.

26. Attached hereto as Exhibit Z is a true and correct copy of the summary resume of Wolf Popper LLP.

27. Attached hereto as Exhibit AA is a true and correct copy of the resume of Malkinson & Halpern, P.C.

28. Attached hereto as Exhibit BB is a true and correct copy of the resume of Hutton & Hutton Law Firm, LLC.

29. Attached hereto as Exhibit CC is a true and correct copy of the resume of Bahe Cook Cantley & Jones PLC.

30. Attached hereto as Exhibit DD is a true and correct copy of the resume of Morgan and Morgan, P.A.

31. Attached hereto as Exhibit EE is a true and correct copy of the resume of the Locks Law Firm LLC.

32. The Proposed Class Counsel for the Plaintiff Class have many years of experience in prosecuting complex products liability and class action litigation. The Proposed Class Counsel are willing and able to fully prosecute this action and have been actively and vigorously pursuing this litigation through voluminous discovery and research.

Dated: January 20, 2010  
Mount Pleasant, South Carolina

/s/ Fred Thompson

Fred Thompson